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BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.

DEPARTMENT OF TRANSPORTATION  
97 SEP 15 PM 3:28  
DOCKET SECTION

Joint Application of

PAN AMERICAN WORLD AIRWAYS, INC.  
and CARNIVAL AIR LINES, INC.

for an exemption from Subparts K and S of 14  
C.F.R. Part 93 (High Density Rule)  
(Boston-New York (JFK))

Docket OST-97-2885 - 3

Application of

AIRTRAN AIRWAYS, INC.

for an exemption from Subparts K and S of 14  
C.F.R. Part 93 (High Density Rule)  
(Knoxville-Washington National)

Docket OST-97-2873 - 3

Application of

SPIRIT AIRLINES, INC.

for an exemption from Subparts K and S of 14  
C.F.R. Part 93 (High Density Rule)  
(Melbourne, FL-New York (LaGuardia))

Docket OST-97-2870 - 5

CONSOLIDATED ANSWER OF DELTA AIR LINES, INC.

15 pgs

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**September 15, 1997**

**BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.**

**September 15, 1997**

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**Joint Application of**

**PAN AMERICAN WORLD AIRWAYS, INC.  
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**Docket OST-97-2873**

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**Application of**

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**for an exemption from Subparts K and S of 14  
C.F.R. Part 93 (High Density Rule)  
(Melbourne, FL-New York (LaGuardia))**

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**Docket OST-97-2870**

**CONSOLIDATED ANSWER OF DELTA AIR LINES, INC.**

On September 5, 1997 Pan American World Airways, Inc. and Carnival Airlines, Inc. ("Pan Am/Carnival") filed an exemption application requesting six

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slots at New York's JFK International Airport to provide additional New York-Boston service. On September 2, 1997, AirTran Airways, Inc. ("AirTran") filed an exemption application requesting four slots at Washington National Airport to provide service between Washington and Knoxville. On August 29, 1997, Spirit Airlines, Inc. ("Spirit") filed an exemption application requesting four slots at New York LaGuardia Airport to provide service between New York and Melbourne, Florida.

Delta Air Lines, Inc. ("Delta") hereby files this Consolidated Answer to the Applications of Pan Am/Carnival, AirTran and Spirit. These three requests must be added to the growing list of carrier applicants seeking to circumvent the FAA's established buy-sell market mechanism through the creation of new slots or the reallocation of slots at the nation's four highly congested and slot-controlled airports. Like the numerous other new entrant slot exemption applications pending before the Department, the instant applications of Pan Am/Carnival, AirTran, and Spirit cannot be granted without vitiating the "exceptional circumstances" criterion established by Congress for the grant of new entrant slot exemptions. See 49 U.S.C. 41714(c).

While Delta does not oppose the grant of exemption relief to new entrants in truly "exceptional circumstances," the Department must exercise its

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exemption authority judiciously in order to avoid undermining the objectives of the High Density Rule. Delta has already explained in detail its reservations about the use of new entrant exemption authority for the wholesale creation of slots in Delta's answers and replies in Dockets OST-97-2442 and OST-97-2557. Delta hereby adopts and incorporates those pleadings in support of this answer.

The flood of new entrant slot exemption requests over the past several months fully validates the concern raised by a number of parties that if the exceptional circumstances criterion are relaxed, the flood gates will be open for any carrier claiming an interest in serving a high-density airport-pair. The resulting exemptions would quickly swallow the rule.

With the prospect of free slots for the asking, it appears that the applicant carriers have largely disregarded the Department's buy-sell rule. Any carrier seeking to add service at one of the high density airports including existing carriers must anticipate and assume the cost of acquiring slots. The Department should not embark on a policy of slot subsidies for new entrants, simply because they are unwilling to pay the cost of acquiring slots.

Pan Am/Carnival. Pan Am/Carnival proposes to use six high density slots at JFK to provide additional non-stop service between New York and Boston. This application fails to meet any of the exceptional circumstances

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criterion previously identified by the Department. Indeed, the facts alleged by Pan Am/Carnival are completely at odds with Department precedent in prior cases. In 1994, the Department granted Reno Air an exemption to provide three daily round-trip flights between Reno and Chicago O'Hare. The Department determined that an award was justified based on the unique economics and characteristics of the Reno - O'Hare airport pair. In granting Reno Air's application, the Department noted (i) the absence of non-stop service between Reno and Chicago O'Hare, (ii) the prior history of nonstop service in that airport pair, (iii) Reno Air's long expressed intention of serving Chicago O'Hare from its hometown market, (iv) the volume of traffic between Reno and O'Hare, (v) the importance of reestablishing nonstop service so that the city of Reno would be able to compete with other tourist attractions, and (v) the fact that Reno was primarily a long haul, low-yield leisure market, where incumbent carriers would be disinclined to reintroduce service. See Order 94-9-30.

By contrast, Pan Am/Carnival's application proposes to add service between Boston and New York, one of the best served nonstop city-pairs in the nation. Passengers between New York and Boston have a multitude of transportation options, including multiple non-stop air transportation service options. There are two competing non-stop shuttle services at LaGuardia, a non-

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stop shuttle service at Newark, and numerous nonstop jet and commuter service options at JFK. In contrast to the Reno Air, there is no need for the Department to subsidize new entry by creating slots in a city pair where there are existing competitive service options.

Apart from its inability to demonstrate the existence of “exceptional circumstances,” Pan Am/Carnival has also failed to demonstrate that they exhausted the commercial opportunities available in the marketplace. Pan Am/Carnival characterizes their search for slots as “generally discouraging” but indicates that they are involved in “continuing discussions” with other carriers to acquire the needed slots through the buy-sell rule. Furthermore, Carnival has been operating at JFK for several years and Pan Am was able to obtain slots for its initial operation in September, 1996, reflecting that each carrier has historically been able to obtain slots in the marketplace.

AirTran. AirTran’s application for new entrant slots to provide service between Knoxville and Washington National is defective as a matter of law and should be dismissed. The first sentence of AirTran’s application cites to the new entrant exemption provision of 47 U.S.C. § 41714. However, that provision does not apply to Washington National Airport. The statute provides “special rules for Washington National Airport” and essentially limits exemptions only to

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time “slides” by carriers “currently holding or operating a slot at Washington National Airport.” 49 U.S.C. § 41714(d). The Department is expressly prohibited by statute from taking action that would result in (1) creating additional slots at National Airport and (2) from withdrawing or reducing the number of slots operated by an air carrier. Id.

Furthermore, even if the relief requested by AirTran were not expressly prohibited by statute, AirTran could not establish the exceptional circumstances necessary for an exemption. According to the OAG, Washington-Knoxville already receives six non-stop flights per day from two carriers, including three flights at National by USAirways Express using advanced, high-speed turboprop aircraft. Thus, as is the case with Pan Am/Carnival, AirTran is proposing to add more service between two cities which have nonstop air transportation service. This does not qualify as “exceptional circumstances,” and the Department should not subsidize new entry by creating slots in a city pair where there are existing competitive service options.

AirTran also asserts that “the cost of slots and time availability would make the proposed [Washington National] service unprofitable.” AirTran application at 2. Exceptional circumstances are not demonstrated merely by the



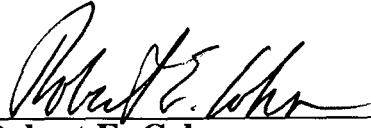
cost of slots in the marketplace. The extraordinary relief afforded by the statute is not a no-cost alternative to the buy-sell rule.

Spirit. Spirit concedes that even Continental, backed by its Newark hub, could not profitably operate nonstop service between Melbourne and New York. There is little reason to expect that Spirit's stand-alone Melbourne-LaGuardia turnaround service would prove any more successful. Two years ago, when the Department rejected Spirit's last bid for LaGuardia slots, the Department found that "Spirit's application also does not meet the exceptional circumstances criterion because the benefits of its proposal are too speculative and the basics of its operations are too risky." Order 95-8-38 at 6. These same deficiencies apply to Spirit's current application.

### **Conclusion.**

None of the instant exemption applications establish "exceptional circumstances" that would warrant an exemption from the high density rule. When considered in the context of all of the other pending applications for new entrant slot exemptions, it is apparent that a relaxation of the exceptional circumstances criteria would quickly defeat the objectives of the high density rule and increase delays and congestion at the nation's slot controlled airports.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert E. Cohn", written over a horizontal line.

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## CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of September, I served a copy of the foregoing Consolidated Answer of Delta Air Lines, Inc., on the following individuals by first class mail, postage prepaid.

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